

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 05/08/2023

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|--|---|---|------------------------|
|  |   | X | DATE FILED: 05/08/2002 |
| 689 EATERY CORP., etc. <i>et ano.</i> ,            | : |   |                        |
| Plaintiffs,  | : |   |                        |
| -v-  | : |   | 02-cv-4431 (LJL)       |
| CITY OF NEW YORK, <i>et al.</i> ,                  | : |   | <u>ORDER</u>           |
| Defendants.  | : |   |                        |
|  | X |   |                        |
|  | X |   |                        |
| 59 MURRAY ENTERPRISES, INC. etc., <i>et ano.</i> , | : |   |                        |
| Plaintiffs,  | : |   | 02-cv-4432 (LJL)       |
| -v-  | : |   |                        |
|  | : |   | <u>ORDER</u>           |
| CITY OF NEW YORK, <i>et al.</i> ,                  | : |   |                        |
| Defendants.  | : |   |                        |
|  | X |   |                        |
|  | X |   |                        |
| CLUB AT 60TH STREET, <i>et al.</i> ,               | : |   |                        |
| Plaintiffs,  | : |   | 02-cv-8333 (LJL)       |
| -v-  | : |   |                        |
|  | : |   | <u>ORDER</u>           |
| CITY OF NEW YORK,                                  | : |   |                        |
| Defendant.   | : |   |                        |
|  | X |   |                        |
|  | X |   |                        |
| 336 LLC, etc, <i>et al.</i> ,                      | : |   |                        |
| Plaintiffs,  | : |   | 18-cv-3732 (LJL)       |
| -v-  | : |   |                        |
|  | : |   | <u>ORDER</u>           |
| CITY OF NEW YORK,                                  | : |   |                        |
| Defendant.   | : |   |                        |
|  | X |   |                        |

LEWIS J. LIMAN, United States District Judge:

The parties seek clarification of the Court’s order of May 2, 2023 (“Order”), indicating that the Court will try the case on the merits beginning on October 16, 2023 in the event that the Court does not grant summary judgment to either party and that it will receive testimony by

declaration (with the declarants being available for cross-examination). *See* Dkt. No. 204.<sup>1</sup> The parties seek clarification with respect to two aspects of the Court's Order: (1) whether it is necessary for the parties to resubmit declarations that have already been submitted in this case in connection with motion practice; and (2) whether the parties will have an opportunity to submit additional declarations after a ruling on the motion for summary judgment. *See* Dkt. No. 206.

As to (1), as long as the parties are in agreement, the Court will accept a letter on May 19, 2023 from the parties indicating which of the declarations previously submitted in motion practice are intended to be submitted as testimony at the trial on the merits. As to (2), the parties should proceed as if the Court will deny summary judgment and should submit all the testimony from the parties and experts that such party would intend to rely upon on a trial on the merits. The Court cannot make guarantees as to the timing of any decision on the cross-motions for summary judgment. After May 19, 2023, the Court will accept testimony from parties or experts only in the form of declarations and only upon a showing of good cause under Federal Rule of Civil Procedure 16(b)(4).

SO ORDERED.

Dated: May 8, 2023  
New York, New York



LEWIS J. LIMAN  
United States District Judge

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<sup>1</sup> Unless otherwise noted, docket references refer to the lead case in these matters, Docket 02 Civ. 4431.